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09/559,704

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Michael D. Zoeckler

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01/05/2010

WOMBLE CARLYLE SANDRIDGE & RICE, PLLC

ATTN: PATENT DOCKETING

P.O. BOX 7037

ATLANTA, GA 30357-0037

EXAMINER

HARMON, CHRISTOPHER R

ART UNIT

PAPER NUMBER

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* MICHAEL D. ZOECKLER

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Application No. 09/559,704  
Technology Center 3700

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Mailed: January 5, 2010

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PAMELA S. BENNETT, *Paralegal Specialist*.

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ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on December 28, 2009. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter requiring attention prior to docketing.

EXAMINER'S ANSWER, GROUNDS OF REJECTION

The Examiner's Answer mailed October 23, 2009 did not include a rejection for claims 3 or 29. It is noted that the Non-Final Rejection mailed May 19, 2009 also did not include a rejection for these claims, even though it stated that claims 1-3, 5-7, 9-11, 13-15, 25-29, 31-33 and 77-81 were finally rejected. In the footnote appearing on page 4 of the Appeal Brief filed September 21, 2009, appellants stated:

The Office Action Summary in the Office action of May 19, 2009, from which this appeal is taken, lists claim 3 as being rejected, but claim 3 is not included in any of the grounds of rejection on pages 2-5 of the Office action. For the purpose of this Appeal Brief, Applicant assumes that the Examiner intended to include claim 3 in grounds of rejection (1) and (2).

Clarification and correction of all Grounds of rejection for all claims is required.

CONCLUSION

Accordingly, it is ORDERED that the application be remanded to the Examiner:

- 1) to vacate the Examiner's Answer mailed October 23, 2009;
- 2) to generate a new Examiner's Answer setting forth the correct Grounds of rejection and to correct other sections of the Answer as may be required;
- 3) if appropriate, to include the approval of the TC Director or his/her designee (as required for any new grounds of rejection); and
- 4) for such further action as may be appropriate.

Application No. 09/559,704

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

PSB

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